

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
APRIL 2, 2008**

CALL TO ORDER A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were **Rita Hall, Randy Toavs, Marc Pitman, Gene Dziza, Marie Hickey Au Claire and Frank DeKort were present. Mike Mower, Jim Heim, and Gordon Cross were absent.** Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 35 people in the audience.

PUBLIC REVIEW Randy Toavs reviewed the public hearing process.

APPROVAL OF MINUTES No minutes were approved.

PUBLIC COMMENT
(not related to agenda items) Charles Lapp, 3230 Columbia Falls Stage, commented on the text amendments. He said the more restrictive provisions will control. He said the Growth Policy is not a regulatory document and that is how Flathead County has been operating. The neighborhood plans are an idea and are not regulatory. He said the neighborhood plans should be given consideration of general policies and patterns, but are just a guidance. He said wherever anything discusses zoning the Board needs to look at the zoning regulations and make sure it matches. He said the Board will have to review the Bigfork Neighborhood Plan as a regulatory document as long as the text amendments are worded they way there are.

**PRELIMINARY PLAT/
NORTHSORE RANCH
(FPP 07-32)
CONTINUED** A request by Kleinhans Farms Estates, LLC for Preliminary Plat approval of North Shore Ranch, a 290 lot single-family residential subdivision with equestrian facilities, parks and open space on 367.470 acres. Lots in the subdivision are proposed to have public water and sewer systems. The property is located off MT State Highway 82.

ROLL CALL TO UNTABLE On a roll call vote the motion passed unanimously.

**MOTION TO ADPOPT F.O.F.
MOTION TO AMEND F.O.F. 39** Dziza made a motion seconded by Hall to adopt Staff report FPP 07-32 as findings of fact.
Dziza made a motion seconded by DeKort to amend finding of fact 39 to state: **The risk of flooding will be a potentially negative impact of the proposed subdivision on public health and safety because an event in which Flathead Lake raises up to 2.1' higher than 2892.9' (NGVD 29 BFE shown on preliminary plat) is not unprecedented and such an event would inundate a portion of the proposed subdivision designated for residential lots. The**

probability of increased risk to public health and safety from flooding on those areas of the proposed subdivision above 2892.9 (NGVD 29) feet above sea level is low because only one flood event since Hungry Horse Dam became operational has caused Flathead Lake to exceed the BFE and that flood event was estimated by FEMA to be statistically less probable than the estimated .2% annual chance flood event.

**ROLL CALL TO
AMEND F.O.F. 39**

On a roll call vote the motion passed unanimously.

**MOTION TO
AMEND F.O.F. 34**

Hall made a motion seconded by Pitman to state: **The proposed subdivision will minimally impact an eagle's nest located near the subject property because the nest is *was* located 1,620' away from the nearest proposed lot and according to the applicant's Wildlife Report, the "USFWS Draft National Bald Eagle Management Guidelines" suggests a setback of 660' from eagle nests.**

**ROLL CALL TO
AMEND F.O.F. 34**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Dziza said Citizens for a Better Flathead had information about parkland dedication. He asked about dedicating land and cash-in-lieu.

Grieve said the Commissioners can waive the requirement for parkland if the applicant is proposing open space like trails, etc. that is owned by the homeowners.

Dziza asked if the roads were included as open space.

Grieve said there is no requirement for open space in any subdivision unless it's clustered. The open space calculation states the acreage in roads and open space.

DeKort asked if state law required parkland dedication in land or cash-in-lieu.

Grieve said the local governing body can waive the parkland dedication. He said it is up to the Board to decide if parkland is needed.

Toavs said it is addressed in finding-of-fact six and states the open space is open to the public but the HOA reserves the right to take it away from the public if they feel the need to.

**MOTION TO
AMEND F.O.F. 6**

Grieve said Staff reviewed it as not being open to the public. Toavs made a motion seconded by DeKort to amend finding of fact six to state: **The impact of the proposed subdivision to local recreation services is acceptable because many recreation amenities will be**

offered within the proposed subdivision and utilization of existing services outside the proposed subdivision is unlikely to create an undue strain on those services. *It has been mentioned that public access can and may be cut off.*

**ROLL CALL TO
AMEND F.O.F. 6**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey Au Claire asked about the connectivity with Lakeside and Somers. She asked how it would work to have sewer with one district and water with another district.

Grieve said in Staff's review connectivity was not a concern because it would fall under a different topic of discussion other than subdivision review. The applicant has proven that they have service and that's the only real criteria under subdivision review.

Hall said finding of fact 17 discusses horse manure. Each of the homes is allowed to have up to two horses that are housed in the central equestrian center unless the lot size is bigger than one acre. The 75 acres at the south end of the property is where the equestrian center will be located. She said 290 homes with 2 horses each equals a lot of horse manure. She said there could be 580 horses housed on the subdivisions.

Sean Averill said the facility holds 40 horses total and there are about 10 lots that could hold their own horses.

**MOTION TO
AMEND F.O.F. 17**

DeKort made a motion seconded by Hickey Au Claire to amend finding of fact 17 to state: ***The impact to the shallow aquifer of fertilizers and horse manure and contaminants such as herbicide, chlorides and metals generated by the proposed subdivision is acceptable because the applicants have demonstrated that with proper management, the soils and vegetation on the subject property will be able to process and absorb nutrient loads generated by fertilizer and composted manure. Given the characteristics of the soils and high groundwater levels it may be impossible to prevent these contaminants from entering the groundwater.***

**BOARD
DISCUSSION**

DeKort said there are a lot of containments that would impact the area and some of things to impact the shallow aquifer. He said fertilizer, contaminants, herbicides, chlorides, metals and horse manure all need to be considered. He said given the characteristics of the soils and high ground water levels it would be impossible to prevent these containments from entering the ground water.

Grieve said the applicants did submit documentation that the normal loading of herbicides is less than that of the AG use that has

historically been on the property. Staff did not find that to be a problem.

Pitman said it can absorb nutrients but it doesn't say anything about the chlorides and metals.

Dziza said the impossible is what gets him and he doesn't have the expertise to back that up.

DeKort amended the motion to say may.

**ROLL CALL TO
AMEND F.O.F. 17**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
F.O.F. 48**

Toavs made a motion seconded by Pitman to add finding of fact 48 to state: ***The potential of having to eliminate rifle hunting in the public lands is a possibility.***

**ROLL CALL TO
ADD F.O.F. 48**

On a roll call vote the motion passed unanimously.

DeKort asked where the wetland delineations are.

Grieve said the application has maps showing where the wetland delineation is.

DeKort asked if there was a wetland in the North West corner of the property.

Grieve pointed out on a map where the wetlands were.

Eric Mulchahy said a wetland delineation was done on the whole property. There are jurisdictional wetlands and non jurisdiction wetlands. There are two different types of wetlands. The study was done on the whole property.

Grieve said the wetland delineation was done on 30 acres.

Mulchahy said RLK Hydro looked at the whole property and all of the wetlands are protected.

**MOTION TO ADD
F.O.F. 54**

Dziza made a motion seconded by DeKort to add finding of fact 54 to state: ***PP&L currently owns a flood easement that includes lands within the proposed North Shore Ranch Subdivision.***

**BOARD
DISCUSSION**

DeKort said on the USGS map the water fowl protection area has a dike between the lake and the proposed subdivision. The dike held back the 64 flood, but the dike is no longer functional.

Grieve said the land the dike sits on is lower in elevation than the subject property. He said the lake elevation exceeded the BFE by .333 feet. He said portions of the subject property would still have buildable sites on all the lots.

**ROLL CALL TO
ADD F.O.F. 54**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
F.O.F. 55**

Pitman made a motion seconded by DeKort to add finding of fact 55 to state: ***There was a functioning dike at one time on the WPA south of the subject property but that dike is no longer maintained.***

**ROLL CALL TO
ADD F.O.F. 55**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
F.O.F. 56**

DeKort made a motion seconded by Hall to add finding of fact 56 to state: ***During the public hearing on March 26, 2008 information related to this application was submitted by Geomatrix Consultants, Inc. (Chris Cerquine and Cam Stringer). This scientific evaluation calls into question the methodologies and conclusions related to (among others) flooding, shallow groundwater, groundwater interaction with Flathead Lake, and wetlands delineation.***

**ROLL CALL TO
ADD F.O.F. 56**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hall discussed finding of fact 30 regarding specific view sheds.

Grieve said there are three view corridors being considered. He said it is in the application on page 13 of the environmental assessment.

**MOTION TO ADD
F.O.F. 57**

DeKort made a motion seconded by Hickey Au Claire to add finding of fact 57 to state: ***During the public hearing on March 26, 2008 Montana Fish, Wildlife and Parks provided additional relevant information related to findings of fact 32-36 related to wildlife and wildlife habitat. Significant among these additional facts are:***

- i. Impacted species are significant on a national and statewide scale.***
- ii. The north shore is recognized by the county as "critical" or "critical wildlife habitat" area.***
- iii. The proposed density is too high for this area when considering the proposed mitigation measures.***

- iv. The proposed buffer area and covenants are not adequate to mitigate the probable impacts of development and recreation in this application.*
- v. The buffers for wildlife use and habitat would be diminished by the trail system.*

**ROLL CALL TO
ADD F.O.F. 57**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
F.O.F. 58
BOARD
DISCUSSION**

DeKort asked what the current situation of the conservation easement was.

Simmon said it will be permanent open space.

**ROLL CALL TO
ADD F.O.F. 58**

On a roll call vote the motion passed unanimously.

**ROLL CALL TO
ADOPT F.O.F. AS
AMENDED**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
DENIAL**

DeKort made a motion seconded by Hall to recommend denial of FPP 07-32 to the Commissioners.

**BOARD
DISCUSSION**

Hall said she liked the project but is wondering if the applicant would be willing to do a mid course correction to decrease the density by about half. It would be a fabulous subdivision will less density.

Dziza said North Shore isn't his favorite subdivision. In reading through all of the comments and material he knows there will be impact to the wildlife refuge and can't quantify the impact. He said there isn't a legally defensible reasons to deny the project because all of the issues have been covered and it meets the preset criteria. He said no one had demonstrated a threat to public safety and he doesn't know how to measure the effect it might have.

Pitman said he gets very disturbed when the US Fish, Wildlife, and Parks, and Montana Fish, Wildlife, and Parks say you cant do anything next to the area, but they wont make the move to buy the property. If it is so critical why doesn't Fish, Wildlife, and Parks purchase the property. He applauded the Flathead Land Trust for trying to buy the land. He doesn't like the density, but doesn't have a reason to deny the subdivision.

Hickey Au Claire asked if the applicant would be willing to work with

the land trust for buying the land.

Simmon said that is correct.

DeKort said flooding, density and wildlife are paramounting his decision not to support the proposal. It's substantially the same application as it was when it came before the Board two years ago except there are no clusters. He said no mitigation efforts have been made by the applicant to change from what it was two years ago.

Toavs said he disagreed and thought the applicants had addressed a lot of the issues.

Mulchahy said the density was reduced by 20 lots. There were originally lots that came into the floodplain and all of those lots are now pushed out of the floodplain. They increased the open space by 23 acres and no ball fields are in the floodplain areas. The applicant defined the parks and amenities and worked on the design for the buffer. They increased the distance between the waterfowl protection area and the lots. The applicant secured agreements with MDOT for the three approaches. They created a urban standard fire suppression system. They prepared a hydrogeological analysis and a geotechnical analysis and a wildlife management plan. The CC&R's were enhanced to address the pet issue.

**ROLL CALL TO
RECOMMEND
DENIAL**

On a roll call vote the motion failed 2-4 with Hickey Au Claire, Toavs, Pitman, and Dziza dissenting.

**MOTION TO
RECOMMEND
APPROVAL**

Dziza made a motion seconded by Hickey Au Claire to recommend approval of FPP 07-32 to the Commissioners.

**BOARD
DISCUSSION**

Hickey Au Claire discussed having different sewer and water connections to Lakeside and Somers.

Hall said the Somers water and sewer department cant provide their water. Their sewage is processed by lakeside.

Dziza said Hall brought up an excellent concern about the buffer on the east side. He asked how it would affect the application if the buffer was increased.

Grieve said increasing the buffer requires modifying other things to account for the space. The applicants are going to have to figure out how to maneuver things around. If the buffer is increased to a bigger buffer there isn't a lot of crunch room to work with. When the applicant comes in for final plat, they could come in with a plat that has a modified layout and those modifications wouldn't have been

reviewed.

The Board discussed what to do with the buffer on the eastside.

Mulcahy said the buffer could be increased and could eliminate 4 lots. It wouldn't affect any of the right of ways and could increase the open space. He said they could increase the buffer to a minimum of 150 feet.

**MOTION TO ADD
COND 25**

Dziza made a motion seconded by Hickey Au Claire to add condition 25 to state: ***The east boundary buffer shall be increased to 150' by reducing 4 lots on the east portion of the proposed subdivision. H27, H10, H3 and H15 will be removed and the remaining lots will be reoriented to substantially retain sizes of lots and accommodate the buffer.***

**ROLL CALL TO
ADD COND 25**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
COND 26**

Pitman made a motion seconded by Hickey Au Claire to add condition 26 to state: ***The equestrian trails through Open Space A shown on the preliminary plat shall be moved to within 20' of the back lot lines of lots that abut Open Space A. The pedestrian trail shall be moved to within 50' of the back lot lines of lots that abut Open Space A. This will accommodate a 20' separation between the trails.***

**BOARD
DISCUSSION**

Simmon said there is a pedestrian and a equestrian trail. He said a safe requirement is to have at least 20 feet between the trails.

**ROLL CALL TO
ADD COND 26**

On a roll call vote the motion passed 5-1 with Hall dissenting.

**MOTION TO ADD
COND 20 j**

Toavs made a motion seconded by Dziza to add condition 20 j to state: ***Residents are advised that they are living next to a public hunting area and accept the potential dangers involved.***

**ROLL CALL TO
ADD COND 20 j**

On a roll call vote the motion passed unanimously.

**MOTION TO ADD
COND 20 h**

Dziza made a motion seconded by Hickey Au Claire to add condition 20 h to state: ***An area between Lots A38 and or B12 and between Lots B19 and D38 is reserved for connection to adjoining roads to provide interconnectivity. Any future road connection shall be approved by the Homeowner's Association.***

**ROLL CALL TO
ADD COND 20 h**

On a roll call vote the motion passed unanimously.

- MOTION TO ADD COND 20 k** Toavs made a motion seconded by Dziza to add condition 20 k to state: *Pennsylvania Power & Light (PPL) holds a flood easement on this property.*
- ROLL CALL TO ADD COND 20 k** On a roll call vote the motion passed unanimously.
- ROLL CALL TO APPROVE** On a roll call vote the motion 5-1 with DeKort dissenting.
- OLD BUSINESS** DeKort asked why the Board members not present last week were advised not to be here tonight,.
- Grieve said Harris said they could participate if they watched the DVD and read all of the information. The applicants put forth the idea that those people had no guarantee of watching the DVD.
- ADJOURNMENT** The meeting was adjourned at approximately 8:35 p.m. on a motion by Dziza seconded by Hickey Au Claire. The next meeting will be held at 6:00 p.m. on April 9, 2008.

Gordon Cross, President

Kayla Kile, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 5/14/08.